IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 23RD OCTOBER 2007 / 1ST KARTHIKA 1929

Bail Appl..No. 6335 of 2007()

CRMP.3164/2007 of I ADDL. DISTRICT COURT, KOLLAM
[CRIME NO.373/2007 OF KUNNICODE POLICE STATION, KOLLAM DISTRICT]

.....

PETITIONER/ACCUSED:

UDAYAKUMAR, AGED 39 YEARS,
S/O.SREENIVASAN, UDAYABHAVANIL, NEAR VETTIKKAVALA,
KARIKKAMUTTOM, VETTIKKAVALA VILLAGE,
KOTTARAKKARA TALUK, KOLLAM DISTRICT.

BY ADV. SRI.C.C.THOMAS

RESPONDENTS: COMPLAINANT:

STATE OF KERALA REPRESENTED BY SUB
INSPECTOR OF POLICE, KUNNICODE POLICE STATION,
KOLLAM DISTRICT REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 23/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.6335 of 2007

Dated this the 23rd day of October 2007

O R D E R

Application for regular bail. The petitioner faces allegations under the Kerala Abkari Act. The petitioner was arrested on 6/9/2007. Investigation is in progress. Final report has not been filed so far.

2. What is the allegation against the petitioner? The ascertainment of the allegation appears to be important and crucial in the facts and circumstances of this case. The learned Sessions Judge, in Annexure E order, appears to have noted that 2100 litres of spirit was found in the possession of the petitioner in his toddy shop. The learned counsel for the petitioner submits that there is no such allegation even for the investigating officer.

3. The learned Public Prosecutor submits that this crime was detected in the course of investigation in crime No.357/2007 of Kunnicode police station. That crime relates to a hooch tragedy, when those consumed liquor was seriously injured and some of them met with their death. While investigating that crime, the investigating officers directed their energy to ascertain the source of liquor which was served in that toddy shop. It is alleged that, in the course of such investigation, it

was revealed that the person, who supplied spirit to the said shop had also supplied spirit to various others including the petitioner herein. 2100 litres of spirit were allegedly supplied by the said supplier to the petitioner herein also, who allegedly runs the toddy shop binami in the name of some others. Attempt was made to trace such spirit which was allegedly supplied to the petitioner by the said supplier - one Edison Mathew by name. It is admitted by the learned Public Prosecutor now that no portion of such spirit was ever recovered. What is recovered is only two bottles of toddy from a toddy shop which the petitioner was allegedly running binami. No other materials are recovered.

4. Who made the confession statement, in which it is admitted that 2100 litres of spirit were supplied to the petitioner? No clear answer is forthcoming to this query also except that 2100 litres of spirit were allegedly supplied to the petitioner herein also by the said Edison Mathew. It is not revealed at all as to which person had made confession to that effect. No copy of the confession statement is available in the case diary also. The learned counsel for the petitioner submits that the said Edison Mathew, who had allegedly brought the spirit and supplied 2100 litres to the petitioner, has not made an accused in this crime.

5. In these circumstances, notwithstanding the opposition of the learned Public Prosecutor, I am satisfied that the petitioner is entitled for grant of regular bail. Notwithstanding the rigor of Section 41A of the Kerala Abkari Act, I am satisfied that the petitioner is entitled to be granted bail now considering the nature of allegation and the quantum and quality of the materials relied on.

6. In the result, this petition is allowed. The petitioner shall be released on bail on the following terms and conditions:

i) He shall execute a bond for Rs.2,00,000/- (Rupees two lakhs only) with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

ii) The petitioner shall make himself available for interrogation before the investigating officer between 10 a.m and 12 noon on all Mondays and Fridays, for a period of three months and thereafter as and when directed by the investigating officer in writing to do so.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007